

Washington State Auditor's Office
Whistleblower Report

Eastern Washington University
Spokane County

Report No. 1003254

Issue Date
March 22, 2010



WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

March 22, 2010

Eastern Washington University
Cheney, Washington

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 09-067 for Eastern Washington University.

The State Auditor's Office received an assertion of improper governmental activity at the University. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the results of our investigation.

Questions about this report should be directed to Investigator Brad White at (509) 335-5921 or Director of Special Investigations Jim Brittain at (360) 902-0372.

BRIAN SONNTAG, CGFM
WASHINGTON STATE AUDITOR

BS:bw

cc: Ms. Toni Habegger, Associate Vice President and Chief Financial Officer

Investigation Summary

State of Washington Eastern Washington University Spokane County

ABOUT THE INVESTIGATION

On May 8, 2009, the State Auditor's Office opened an investigation into an assertion that Eastern Washington University's Chief of Police was using an inter-local agreement between the University and the city of Cheney as the basis to direct University officers to conduct routine patrols of city streets, which is beyond the University's authority and is an improper use of state funds for providing police services at no cost to the city.

ASSERTIONS AND RESULTS

Assertion 1:

Eastern Washington University's Chief of Police is using an inter-local agreement to justify dispatch of all University officers to conduct routine patrols of all the streets in the city of Cheney.

We found no reasonable cause to believe that improper government activity occurred.

We investigated this complaint primarily based on the Whistleblower's assertion that University police officers were conducting routine patrols on city streets outside of University boundaries. Conducting routine patrols could be deemed a violation of the University's authority under state law (RCW 28B.10.555) and therefore would be an improper governmental activity under the Whistleblower state law.

During our preliminary investigation, we reviewed state law RCW 10.93.070(1), which allows police officers, including University officers, to enforce traffic laws of the state upon written consent of the chief of police in whose primary territorial jurisdiction the exercise of the powers occur. We found this consent was obtained through an inter-local agreement between the University and the city and also in a separate letter from the Cheney Police Department.

As described in Assertion 2, we confirmed that University officers have issued citations for traffic and criminal violations that occurred outside of the campus boundaries. However, this activity is not a violation of the state laws cited above.

The inter-local agreement between the University and City states, in part:

Section 4(a) -- In the normal course, each jurisdiction will dispatch its own officers as necessary to a call, and each jurisdiction will normally provide

routine back-up for officers of the same jurisdiction. If either agency lacks sufficient officers to properly respond to a call or provide back-up, the other agency may assist.

Section 4(b) -- Officers shall primarily patrol and respond to calls in their designated jurisdiction.

Section 4(c) -- Officers as a general rule will not take enforcement of minor traffic violations outside of their designated jurisdiction.

The wording of section 4(b) and 4(c) of the inter-local agreement gives the University authority to patrol or enforce a traffic violation away from campus on a limited basis, but the agreement has no mechanism to quantify or measure whether each party is meeting these terms. The University and city police chiefs have met periodically to review inter-department law enforcement activities in accordance with the agreement, but the proceedings of these meetings are not formally recorded. Our determination of whether the University is adhering to this agreement is provided in Assertion 2 below.

Assertion 2:

The inter-local agreement between Eastern Washington University and the city of Cheney provides state resources for the city's benefit and the University is incurring unnecessary costs in patrolling city streets.

We found no reasonable cause to believe that improper government activity occurred.

We reviewed this assertion to determine whether the agreement between the University and city resulted in a gross waste of public funds, which is defined in the Whistleblower state law as allowing funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

As part of our investigation, we analyzed the location of traffic and criminal citations issued by University officers outside of campus boundaries from March 25, 2008, through June 12, 2009. Of the total citations issued by University police, we estimate between 9 percent and 14 percent were in off-campus locations during that time (approximately 37 of 260 citations). Our off-campus estimate does not include citations issued in response to state grant-funded patrols sponsored by the Washington State Traffic Safety Commission, such as seat belt emphasis patrols.

If an off-campus citation is a result of a routine patrol on city streets, we agree with the whistleblower's assertion that this provides a financial benefit to the city at the cost of the University. However, if an off-campus citation is issued in response to a dispatched call to assist or back up a city officer, we do not believe this is an improper governmental action because these costs must be incurred regardless of jurisdiction. During our investigation we interviewed former University police officers who each stated they were not directed to patrol city streets in general. However, the former officers stated they had at times parked their vehicles a few blocks off campus in an effort to reduce speeding onto and away from campus. In addition, the officers explained there were instances when they would see an infraction occur on campus, but were not able to stop the driver until a few blocks away from campus.

The city earns about 35 percent of the citation revenue it collects and the remainder goes to the state of Washington. For the time period specified above, the city of Cheney calculated the total revenue for both on-campus and off-campus traffic citations to be \$17,360. Of this amount, the city said it would receive about \$6,336. Using an off-campus citation rate of 9 percent to 14 percent, the approximate amount of revenue retained by the city for off-campus citations is between \$570 and \$887.

While the city of Cheney financially benefitted from University officers making traffic stops away from campus during the time period we studied, the benefit does not rise to the level of a gross waste of public funds as defined in the Whistleblower statute. The safety of the campus and surrounding public was likely increased as a result of this activity, but the city is not sharing in the cost.

The annual salary and benefits for a University patrol officer ranges from \$58,586 to \$70,951 depending on his or her years of service. The amount budgeted annually for fuel and maintenance of the University's seven police vehicles is \$20,000. This amount can vary depending on the price of fuel. Four of these vehicles are typically used by the patrol officers. Certainly a portion of these operating costs can be associated with off-campus traffic enforcement for the time period we studied, but we were not able to determine the exact cost because there are no records showing how the officers spent their time on and off campus each day they reported to work. As stated above, the University is not reimbursed by the city for its off-campus costs and the city retains the traffic citation revenue. The University should consider adding an amendment to its inter-local agreement with the city to recoup any future costs related to off-campus activity.

The inter-local agreement between the University and the city states that all jail costs and booking fees related to charges filed by University police in Cheney Municipal Court or any other court shall be paid by the University. During our investigation, the University found the city has no record of ever billing the University for these costs. The University police department stated the reason is that it conducts the majority of its criminal booking and jailing at the Spokane County jail.

The Whistleblower asserted that the University police department is over staffed and, as a result, officers are assigned to patrol city streets because they do not have enough work on campus. In terms of staffing levels, we found the number of positions within the University Police Department is comparable with other Washington universities, including Central Washington University, Western Washington University and The Evergreen State College. While the number of police department employees listed in the University staff directory appears to be larger than comparable institutions, seven of these employees are "on-call" officers whose salaries account for a minor amount of total University Police Department payroll.

AUDITOR'S REMARKS

We thank University officials and personnel for their assistance and cooperation during the investigation.

INVESTIGATION CRITERIA/POLICIES

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 28B.10.555 - Police forces for universities and The Evergreen State College — Powers:

The members of a police force established under authority of RCW 28B.10.550, when appointed and duly sworn:

- (1) Shall be peace officers of the state and have such police powers as are vested in sheriffs and peace officers generally under the laws of this state; and
- (2) May exercise such powers upon state lands devoted mainly to the educational or research activities of the institution to which they were appointed; and
- (3) Shall have power to pursue and arrest beyond the limits of such state lands, if necessary, all or any violators of the rules or regulations herein provided for.

Inter-local Agreement between the University and the city of Cheney:

Section 4(a) -- In the normal course, each jurisdiction will dispatch its own officers as necessary to a call, and each jurisdiction will normally provide routine back-up for officers of the same jurisdiction. If either agency lacks sufficient officers to properly respond to a call or provide back-up, the other agency may assist.

Section 4(b) -- Officers shall primarily patrol and respond to calls in their designated jurisdiction.

Section 4(c) -- Officers as a general rule will not take enforcement of minor traffic violations outside of their designated jurisdiction.

RCW 10.93.001 - Short title — Legislative intent — Construction:

- (1) This chapter may be known and cited as the Washington mutual aid peace officer powers act of 1985.
- (2) It is the intent of the legislature that current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies be modified pursuant to this chapter.
- (3) This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of general authority peace officers and to effectuate mutual aid among agencies.

(4) The modification of territorial and enforcement authority of the various categories of peace officers covered by this chapter shall not create a duty to act in extraterritorial situations beyond any duty which may otherwise be imposed by law or which may be imposed by the primary commissioning agency.

RCW 10.93.070 - General authority peace officer — Powers of, circumstances:

In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefore by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:

(1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;

(2) In response to an emergency involving an immediate threat to human life or property;

(3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;

(4) When the officer is transporting a prisoner;

(5) When the officer is executing an arrest warrant or search warrant; or

(6) When the officer is in fresh pursuit, as defined in RCW 10.93.120.

RCW 10.93.120 - Fresh pursuit, arrest:

(1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay.

RCW 43.09.210:

. . . All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department,

public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

Contacts

Washington State Auditor

Brian Sonntag, CGFM

brian.sonntag@sao.wa.gov

(360) 902-0360

Director of Special Investigations

Jim Brittain, CPA

jim.brittain@sao.wa.gov

(360) 902-0372

Deputy Director of Special Investigations

Kim Hurley, CPA

kim.hurley@sao.wa.gov

(360) 725-5352

Special Investigations Coordinator

Julie Cooper

julie.cooper@sao.wa.gov

(360) 902-0377

Investigators

Sandra Miller

sandra.miller@sao.wa.gov

(360) 902-0378

Cheri Elliott

cheri.elliott@sao.wa.gov

(360) 725-5358

Director of Communications

Mindy Chambers

mindy.chambers@sao.wa.gov

(360) 902-0091

Public Records Officer

Mary Leider

mary.leider@sao.wa.gov

(360) 725-5617

Main phone number

(360) 902-0370

Toll-free hotline for reporting government waste, efficiency

(866) 902-3900

Web site

www.sao.wa.gov

To receive electronic notification of audit reports, visit:
<https://www.sao.wa.gov/EN/News/Subscriptions>

Americans with Disabilities

In accordance with the Americans with Disabilities Act, this document will be made available in alternate formats. Please call (360) 902-0370 for more information.